

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JEFFREY PERRY THOMAS,

Plaintiff,

v.

DETECTIVE UDIJOHN et al.,

Defendants.

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Civ. No. 16-8833 (FLW) (TJB)

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MEMORANDUM OPINION

FREDA L. WOLFSON, Chief U.S.D.J.

Plaintiff, Jeffrey Perry Thomas (“Thomas” or “Plaintiff”), is a state prisoner presently incarcerated at the Central Reception and Assignment Facility, in Trenton, New Jersey. Thomas is proceeding *pro se* with in this civil rights action under 42 U.S.C. § 1983. The original Complaint asserted claims for excessive force, denial of medical care, and failure to intervene against New Jersey State Troopers I.R. Pogorzelski (“Pogorzelski”), R. Diaz (“Diaz”), and John Does 1 through 7. (*See* ECF No. 1.) In November 2018, the Court granted a motion for summary judgment by Pogorzelski and Diaz after they established, and Thomas did not meaningfully challenge, that they were not the officers who effected the arrest in question. (*See* ECF Nos. 22, 27, 30, & 31.) As discovery in the case had yielded the names of other officers involved in Thomas’s arrest, the Court granted Thomas leave to file within 30 days a proposed amended complaint substituting specific individual defendants for the John Doe defendants. (*See* ECF No. 30 at 9; ECF No. 31.)

Thomas subsequently filed a motion to amend by substituting as defendants Detective Udijohn, Detective Tuccillo, Detective Sergeant Burke, and Trooper Tansey. (ECF No. 32.) Defendants asserted that the motion must be denied, as Thomas had not included a copy of a

proposed amended complaint and had thus technically missed the 30-day deadline to file a proposed amended complaint. (ECF No. 33.) Magistrate Judge Tonianne J. Bongiovanni administratively terminated this motion based on Thomas's failure to include a proposed amended complaint, but granted Thomas leave to file another motion to amend, accompanied by a proposed amended complaint. (ECF No. 35.)

Thomas subsequently filed another motion to amend, accompanied by a short proposed Amended Complaint that names the newly identified defendants. (*See* ECF Nos. 36 & 36-3.) Specifically, the proposed amended complaint seeks to substitute in place of the John Doe defendants Detective Udijohn, Detective Tuccillo, Detective Sergeant Burke, and Trooper Tansey. (ECF No. 36-3.) Defendants have not opposed this motion.

Although an amended complaint typically supersedes the original complaint, the two pleadings may be construed together if the amended version specifically refers back to the original. *See W. Run Student Hous. Assocs. v. Huntington Nat'l Bank*, 712 F.3d 165, 171 (3d Cir. 2013). It is apparent that Thomas intends his proposed Amended Complaint to supplement, not supplant, his original. Thus, as Thomas is proceeding *pro se* and in the interests of justice, I will construe the two pleadings together. *See* Fed. R. Civ. P. 8(e) ("Pleadings must be construed so as to do justice.").

As only the identities of the defendants have changed and the substantive allegations remain the same, the analysis from the Court's preliminary screening of the original Complaint remains applicable. (*See* ECF No. 8.) Thus, for the same reasons, the Amended Complaint will be construed as asserting claims for excessive force under the Fourth Amendment, denial of medical care under the Fourteenth Amendment, and failure to intervene under the Fourteenth Amendment. As the Court previously dismissed with prejudice any damages claims asserted

against the original defendants in their official capacities, such claims, to the extent they are asserted against the newly impleaded defendants, are also dismissed with prejudice. (*See* ECF No. 8.)

For the foregoing reasons, Thomas's unopposed motion to amend his Complaint, (ECF No. 36), is GRANTED. To the extent Thomas seeks damages from the newly impleaded defendants in their official capacities, such claims are DISMISSED WITH PREJUDICE. The Clerk shall REOPEN this action and shall mail Thomas the appropriate forms to request service of process by the United States Marshal Service. An appropriate order follows.

DATED: July 10, 2019

/s/ Freda L. Wolfson
FREDA L. WOLFSON
U.S. Chief District Judge